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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MARIBEL VILLANEDA, as an individual, and on behalf of herself and all others similarly situated,

Plaintiff,

vs.

ALCOA GLOBAL FASTENERS, INC., a Delaware Corporation, ALCOA INC., a Pennsylvania Corporation; and DOES 1 through 10,

Defendants.

CASE NO.

CLASS AND COLLECTIVE ACTION COMPLAINT:

(1) FAILURE TO PAY ALL OVERTIME WAGES (LABOR CODE §§ 204, 510, 558, 1194, 1198);

(2) FAIR LABOR STANDARDS ACT (29 U.S.C. § 201 *et seq.*);

(3) WAGE STATEMENT PENALTIES (LABOR CODE § 226 *et seq.*);

(4) WAITING TIME PENALTIES (LABOR CODE § 201-203)

(5) UNFAIR COMPETITION (BUS & PROF CODE § 17200 *et seq.*);

DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE

Plaintiff Mirabel Villaneda ("Plaintiff") on behalf of herself and all others similarly situated, hereby brings this Class and Collective Action Complaint against Defendant Alcoa Global Fasteners, Inc., a Delaware Corporation, Alcoa Inc., a Pennsylvania Corporation; and DOES 1 to 10 (collectively "Defendants"), inclusive, and on information and belief alleges as follows:

JURISDICTION

1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this class and collective action for recovery of unpaid wages and penalties under the Fair Labor Standards Act ("FLSA"), California Business and Professions Code §17200, *et. seq*., Labor Code §§ 204, 226 *et seq*., 510, 558, 1182.12, 1194, 1194.2, 1197, 1198, and California Industrial Welfare Commission Wage Order No. 1-2001 ("Wage Order 1"), in addition to seeking injunctive relief, declaratory relief and restitution.

2. This Court has jurisdiction over Defendants' violations of the FLSA pursuant to 29 U.S.C. § 216 and 28 U.S.C. § 1331 because the action asserts rights arising under federal law. This Court has jurisdiction over Defendants' violation of the Labor Code sections set forth in the immediately preceding paragraph, California Business and Professions Code and Wage Order 1, because these claims derive from the same common nucleus of operative facts.

VENUE

3. Venue is proper under 28 U.S.C. 1391 because Defendants do business in Los Angeles County and the acts alleged herein took place in Los Angeles County. Further, Plaintiff does now, and at all times relevant herein did, reside in Los Angeles County and was employed by Defendants within Los Angeles County. Defendants are also subject to the personal jurisdiction of this Court pursuant to 28 U.S.C. 1391(c), because at least some of them operate businesses where they employed Plaintiff within the Central District of California.

PARTIES

4. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was and currently is, a California resident, residing in the county of Los Angeles. During the four years immediately preceding the filing of the Complaint in this action and within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as an hourly non-exempt employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein, lost money and/or property, and has been deprived of the rights guaranteed to him by the FLSA, California Labor Code §§ 204, 226 *et seq.*, 510, 558, 1182.12, 1194, 1194.2, 1197, 1198, California Business and Professions Code § 17200 *et seq.* (Unfair Competition), and Wage Order 1, which sets employment standards for the manufacturing industry.

5. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and do) business by operating a facility that engages in lightweight metals engineering and manufacturing in Los Angeles County, and throughout California and the United States, and employed Plaintiff and other, similarly-situated hourly non-exempt employees within Los Angeles County and, therefore, were (and are) doing business in Los Angeles County and the State of California, as well as throughout the United States.

6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, Defendants were licensed to do business in California and the County of Los Angeles, and were the employers of Plaintiff and the Classes (as defined in Paragraph 15).

7. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the Defendants sued herein as DOES 1 to 10, inclusive, and for that reason, said Defendants are sued under such fictitious

names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious Defendants, whether individual, partners, agents, or corporate, was responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein.

8. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

9. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class Members.

GENERAL FACTUAL ALLEGATIONS

10. Plaintiff was employed by Defendants from approximately May 2011 to October 2014, as a non-exempt, hourly employee at Defendants' facility in City of Industry, located in Los Angeles, California.

11. During Plaintiff's employment with Defendants, she regularly worked shifts in excess of 8 hours per day and/or 40 hours per week. In addition, she received various forms of non-discretionary incentive pay based on performance,

referred to on Plaintiff's wage statements as "Perf Pay," and/or other forms of pay which are not excludable under California Law and the FLSA when calculating an employee's regular rate (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay").

12. Despite Defendants' payment of Incentive Pay to Plaintiff, Defendants failed to include all forms of Incentive Pay when calculating Plaintiff's regular rate of pay, thereby causing Plaintiff to be underpaid all of her overtime wages. Rather, Plaintiff was only paid one and a half times her base rate, which was not equal to the regular rate, as Defendants failed to include the various forms of Incentive Pay earned during corresponding periods that were required to be included in the regular rate, but were not.

13. The wage statements issued to Plaintiff by Defendants are also facially deficient, as they fail to list the correct overtime wages, net wages and gross wages owed to Plaintiff.

14. As a result of not being paid all overtime wages, Defendants failed to pay Plaintiff all wages owed to her at the time of her termination.

CLASS AND COLLECTIVE ACTION ALLEGATIONS

15. Class Definitions: Plaintiff brings this action on behalf of himself and the following Classes pursuant to Rule 23 of the Rules of Federal Procedure and the FLSA:

a. The California Overtime Class consists of all Defendants' current and former hourly non-exempt employees in California who received Incentive Pay and overtime compensation during a corresponding time period, during the four years immediately preceding the filing of the Complaint through the present.

b. The FLSA Overtime Class consists of all Defendants' current and former hourly non-exempt employees throughout the United States, who received Incentive Pay and overtime compensation during a corresponding time period, during the three years immediately preceding the filing of the Complaint through the present.

c. The Wage Statement Penalty Class consists of the members of the California Overtime Class, during the one year immediately preceding the filing of the Complaint through the present.

d. The Waiting Time Penalty Class consists of Defendants' formerly employed members of the California Overtime Class, during the three years immediately preceding the filing of the Complaint through the present.

16. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the classes and subclasses are unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than five hundred (500) individuals as to each Class. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

17. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

i. Whether Defendants violated the applicable Labor Code provisions including, but not limited to §§ 510 and 1194 by requiring overtime work and not paying for said work according to the overtime laws of the State of California;

ii. Whether Defendants failed to properly include all forms of compensation when computing the respective regular rates for members of the California and FLSA Overtime Classes;

iii. Whether Defendants' policies and/or practices for determining the regular rate of pay for purposes of overtime compensation to the Overtime Classes violated California law and/or the FLSA;

iv. Whether Defendants' wage statements conformed to the requirements of Labor Code § 226(a);

18. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as their uniform method of calculating overtime payments for the members of the California and FLSA Overtime Classes. As such, these common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

19. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as an hourly non-exempt employee in California and the United States during the statutes of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein, Plaintiff, like the members of the Classes, was deprived of all overtime and minimum wages, and was provided with deficient wage statements.

20. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the classes.

21. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. Similarly, the FLSA is remedial in nature

and serves an important public interest in establishing minimum working conditions and standards through the United States. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual Class Members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual Class Members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual Class Members which would, as a practical matter, be dispositive of the interest of the other Class Members not parties to adjudications or which would substantially impair or impede the ability of the Class Members to protect their interests. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto.

22. As such, the Rule 23 Classes identified in Paragraph 15 are maintainable as a Class under Rule 23(b)(1) and/or Rule 23(b)(3).

FIRST CLAIM

FAILURE TO PAY OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

23. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 22 as though fully set forth herein.

24. This cause of action is brought on behalf of the California Overtime Class pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198, which provide that hourly non-exempt employees are entitled to all overtime wages and compensation for hours worked, and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

25. Plaintiff and members of the California Overtime Class worked overtime hours and were paid various forms of Incentive Pay, which are not statutory exclusions when calculating an employee's regular rate. At all times relevant herein, Defendants were required to properly compensate hourly non-exempt employees, including Plaintiff and members of the California Overtime Class, for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 1. Wage Order 1, § 3 requires an employer to pay an employee "one and one-half (1½) times the employee's regular rate of pay" for work in excess of 8 hours per work day and/or in excess of 40 hours of work in the workweek. Wage Order 1, § 3 also requires an employer to pay an employee double the employee's regular rate of pay for work in excess of 12 hours each work day and/or for work in excess of 8 hours on the seventh consecutive day of work in the workweek.

26. Plaintiff is informed and believes, and based thereon alleges that, Defendants regularly and systematically, as a policy and practice, miscalculated the overtime rate of pay by failing to properly include the various forms of

Incentive Pay paid to Plaintiff and members of the California Overtime Class, which are not statutory exclusions when calculating an employee's regular rate of pay. Rather, Plaintiff and members of the California Overtime Class were only paid one and a half times their base rate, which was not equal to the regular rate, as Defendants failed to include the various forms of Incentive Pay earned during corresponding periods that were required to be included in the regular rate, but were not. Accordingly, Plaintiff and members of the California Overtime Class were not compensated at the appropriate rates of overtime pay for all hours worked.

27. Moreover, Defendants regularly, systematically, and impermissibly rounded the hours worked by Plaintiff and members of the California Overtime Class to Defendants' benefit, which resulted, over a period of time, in the failure to properly compensate them for all overtime hours worked. Accordingly, Plaintiff and members of the California Overtime Class were not compensated for all overtime hours worked, nor were they compensated at the correct overtime rates of pay for all overtime hours worked.

28. Defendants' policy and practice of requiring overtime work and not paying at the proper overtime rates for said work violates California Labor Code §§ 204, 210, 510, 558, 1194, and 1198, and Wage Order 1.

29. Plaintiff is informed and believes and thereon alleges that the job duties and responsibilities of the California Overtime Class are irrelevant because Plaintiff and all others similarly situated merely allege wrongdoing with Defendants' pay policies and practices as to calculating the applicable overtime rates of pay for overtime worked by members of the California Overtime Class.

30. The foregoing policies and practices are unlawful and create an entitlement to recovery by Plaintiff and members of the California Overtime Class in a civil action for the unpaid amount of overtime premiums owing, including

interest thereon, statutory penalties, civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 210, 510, 558, 1194, 1198, 2698 *et seq.*, and Code of Civil Procedure § 1021.5.

SECOND CLAIM

FLSA VIOLATIONS

(AGAINST ALL DEFENDANTS)

31. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 30 as though fully set forth herein.

32. This cause of action is brought pursuant to 29 U.S.C. § 207, which requires employers to pay all non-exempt employees one and one-half times the regular rate of pay for all hours worked in excess of 40 per workweek.

33. Plaintiff and members of the FLSA Overtime Class worked in excess of 40 hours per workweek, earned overtime compensation, and received various forms of Incentive Pay, which are not exclusions when calculating the regular rate of pay.

34. Plaintiff is informed and believes, and based thereon alleges that, Defendants regularly and systematically, as a policy and practice, miscalculated the overtime rate of pay by failing to properly include the various forms of Incentive Pay paid to Plaintiff and members of the FLSA Overtime Class, which are not statutory exclusions when calculating an employee's regular rate of pay. Rather, Plaintiff and members of the FLSA Overtime Class were only paid one and a half times their base rate, which was not equal to the regular rate, as Defendants failed to include the various forms of Incentive Pay earned during corresponding periods that were required to be included in the regular rate, but were not. Accordingly, Plaintiff and members of the FLSA Overtime Class were not compensated at the appropriate rates of overtime pay for all hours worked.

35. Defendants' policy and practice of requiring overtime work and not paying at the proper overtime rate for said work violates the FLSA's overtime requirements including, but not limited to 29 U.S.C. § 207.

36. Defendants' policies and practices, as alleged, constitute a wilful violation of the FLSA, within the meaning of 29 U.S.C. § 255.

37. Defendants' policy and practice of failing to include all forms of Incentive Pay in the overtime rate calculations for Plaintiff and members of the FLSA Overtime Class creates an entitlement to recovery by Plaintiff and members of the FLSA Overtime Class in a civil action for the unpaid amount of overtime premiums owing, including liquidated damages, attorneys' fees and costs, per 29 U.S.C. § 216 and interest thereon.

THIRD CLAIM

WAGE STATEMENT PENALTIES

(AGAINST ALL DEFENDANTS)

38. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 37 as though fully set forth herein.

39. Plaintiff is informed and believes, and based thereon alleges that, Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish her and members of the Wage Statement Class with accurate and complete wage statements regarding their correct regular rates of pay, rates of overtime pay, total gross wages earned, and total net wages earned, in violation of Labor Code § 226.

40. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all their overtime wages, and deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

41. Defendants' failures creates an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226, including statutory penalties, civil penalties, reasonable attorney's fees, and costs of suit according to California Labor Code §§ 226 and 226.3.

FOURTH CLAIM

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

42. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 41 as though fully set forth herein.

43. This cause of action is brought pursuant to Labor Code §§ 201-203 which require an employer to pay all wages immediately at the time of termination of employment in the event the employer discharges the employee or the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

44. Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all of their final wages at the time of termination which includes, among other things, unpaid overtime and minimum wages. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was and is willful within the meaning of Labor Code § 203.

45. Defendants' wilful failure to timely pay Plaintiff and members of the Waiting Time Class their earned wages upon separation from employment results

in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

FIFTH CLAIM

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

46. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 41 as though fully set forth herein.

47. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 et seq., by: (a) failing to pay Plaintiff and members of the California Overtime Class all overtime wages owed; (b) knowingly failing to furnish Plaintiff and members of the Wage Statement Class with accurate and complete wage statements in violation of Labor Code § 226; and (c) wilfully failing to pay Plaintiff and the members of the Waiting Time Penalty Class all wages owing at the time of their terminations.

48. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

49. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff, for herself and on behalf of the members of the Classes, seeks full restitution of monies, as necessary and according to proof, to

restore any and all monies withheld, acquired and/or converted by the Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

50. The acts complained of herein occurred within the last four years immediately preceding the filing of the Complaint in this action.

51. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and those of the Classes, to obtain restitution, and to enforce important rights affecting the public interest. Plaintiff thereby incurred the financial burden of attorneys' fees and costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

PRAYER

WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Claim, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
5. Upon the Second Claim, for compensatory, consequential, liquidated, general and special damages pursuant to 29 U.S.C. §§ 207 and 216.
6. Upon the Third Claim, for statutory penalties pursuant to Labor Code § 226;
7. Upon the Fourth Cause of Action, for statutory waiting time penalties pursuant to Labor Code § 203;

8. Upon the Fifth Claim, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;
9. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6 and Civil Code §§ 3287 and 3289;
10. On all causes of action, for attorneys' fees and costs as provided by Labor Code § 1194 *et seq*. and Code of Civil Procedure § 1021.5.
11. For such other and further relief the Court may deem just and proper.

Dated: February 17, 2015

Respectfully submitted,
BOREN, OSHER & LUFTMAN LLP

By: /s/ Paul K. Haines
Paul K. Haines
Attorneys for Plaintiff, the Classes and Aggrieved Employees

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: February 17, 2015

BOREN, OSHER & LUFTMAN LLP

By: /s/ Paul K. Haines
Paul K. Haines
Attorneys for Plaintiff, the Classes and Aggrieved Employees

CONSENT OF PLAINTIFF MARIBEL VILLANEDA
RE CONSENT TO SUE

I, Maribel Villaneda, declare:

1. I am a Plaintiff in the above-captioned action. The following is of my own personal knowledge and, if called as a witness, I could and would testify competently thereto.

2. I hereby consent to be joined in this suit against Alcoa Inc. and Alcoa Global Fasteners, Inc., form of entity unknown, and DOES 1 to 10, under the Fair Labor Standards Act, 29 U.S.C. §§ 206 *et seq.*, for unpaid overtime wages and other relief available under the Act.

3. I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 30, 2015 in Los Angeles, California.

[signature]
Maribel Villaneda